

Belgian private foundation; investment income. A Belgian private foundation, whose only business activities in the U.S. are investments from which it derives interest income, is not exempt from the excise tax on gross investment income imposed by section 4948(a) of the Code.

Advice has been requested whether, under the circumstances described below, a Belgian private foundation is subject to the excise tax imposed by section 4948(a) of the Internal Revenue Code of 1954.

M is a private foundation resident in Belgium that receives substantially all of its support, other than gross investment income, from sources outside the United States. M does not have a permanent establishment in the United States and, aside from investment activities, is not engaged in business in the United States. During its 1975 taxable year, M derived 20x dollars of gross investment income consisting of interest from sources within the United States.

Section 4948(a) of the Code provides, in part, that there is imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization that is a private foundation for the taxable year a tax equal to 4 percent of such income.

Section 4940(c)(2) of the Code provides, in part, with exceptions not relevant here, that the term 'gross investment income' includes the gross amount of income from interest.

Section 53.4948-1(a)(3) of the Foundation Excise Tax Regulations provides that whenever there exists a tax treaty between the United States and a foreign country, and a foreign private foundation subject to section 4948(a) of the Code is a resident of such country or is otherwise entitled to the benefits of such treaty (whether or not such benefits are available to all residents), if the treaty provides that any item or items (or all items with respect to an organization exempt from income taxation) of gross investment income (within the meaning of section 4940(c)(2)) shall be exempt from income tax, such item or items shall not be taken into account by such foundation in computing the tax to be imposed under section 4948(a) for any taxable year for which the treaty is effective.

Section 881(a)(1) of the Code imposes a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as interest to the extent such amount is not effectively connected with the conduct of a trade or business within the United States.

Section 894(a) of the Code provides that income of any kind,

to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under subtitle A, Chapter 1 of the Code.

Article 11 of the United States-Belgium Income Tax Convention, 1973-1 C.B. 619, (The Belgian Convention), provides, in part, that interest derived from sources within the United States by a resident of Belgium may be taxed by the United States at a rate not exceeding 15 percent.

Article 9(3) of the Treaty of Friendship, Establishment and Navigation with the Kingdom of Belgium, February 21, 1961, T.I.A.S. No. 5432 (effective October 3, 1963) (Belgian F.E.N. Treaty) provides, in part, that companies of Belgium that are not engaged in trade or other gainful pursuit within the territories of the United States, shall not be subject, within the territories of the United States, to the payment of taxes, fees, or charges imposed upon or applied to income, capital, transactions, activities, or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by companies of any third country.

Article 9(5) of the Belgian F.E.N. Treaty provides, in part, that the provisions of Article 9 shall not obligate the United States to extend to Belgian companies tax advantages accorded to companies of any third country by virtue of agreements for the avoidance of double taxation.

Income tax conventions (agreements for the avoidance of double taxation) with countries X and Y exempt interest income of a corporations resident in X and Y from income taxation.

The specific question presented in the instant case is whether either (1) the Belgian Convention, or (2) the Belgian F.E.N. Treaty, requires that interest income of a Belgian private foundation be exempt from tax. If so, under section 53.4948-1(a)(3) of the regulations, these items would not be taken into account by the private foundation in computing the tax imposed by section 4948(a) of the Code.

As described above, the Belgian Convention reduces the tax rate on interest derived by a Belgian corporation from sources in the United States from 30 percent, as specified in section 881(a)(1) of the Code, to 15 percent. This reduction of the applicable rate is not an exemption of such items from tax.

Similarly, the Belgian F.E.N. Treaty does not exempt interest income of a Belgian corporation from tax since the income tax conventions with countries X and Y, which, exempt such income of corporations resident in X and Y, are agreements for the avoidance of double taxation.

Accordingly, because neither the Belgian Convention nor the Belgian F.E.N. Treaty exempt M's investment income from income

taxation, section 53.4948-1(a)(3) of the regulations does not operate to exempt such income from the tax imposed by section 4948(a) of the Code.